

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

DAN AND RANDY JENSEN,)	
)	CPSGMHB Case No. 04-3-0010
)	
Petitioners,)	(Jensen)
)	
v.)	
)	
CITY OF BONNEY LAKE,)	FINAL DECISION AND ORDER
)	
Respondent.)	
)	

SYNOPSIS

The City of Bonney Lake updated its Plan and future land use map [FLUM] to reconcile inconsistencies between the FLUM and zoning designations. The update also included five areas where the UGA was expanded. In updating its plan, the City lowered the permitted densities on Petitioners' property from high to medium density and continued designations allowing Very Low densities (up to two units per acre) and Low Densities (up to four units per acre) for over half the land in the City. Petitioners challenged the City's Plan Update for noncompliance with the Act.

The Board found that the UGA expansions that were included in the Plan Update had since been repealed by the County and the City was directed to remove the erroneous UGA areas and designations. The Board also found that the City had discretion to lower the permitted densities on Petitioners' property from high density to medium density, so long as the resulting densities were appropriate urban densities, which they were. Additionally, the Board found that the City was not achieving urban densities and its Plan Update, specifically the Very Low and Low Density Residential designations, did not provide for appropriate urban densities and was inconsistent and noncompliant with the CPPs and the goals and requirements of the Act.

The Board also found that these two designations substantially interfered with Goals 1 and 2, so a determination of invalidity was entered. The Board remanded the Plan Update to the City with direction to achieve compliance within an extended compliance schedule.

I. BACKGROUND¹

On January 27, 2004, the City of Bonney Lake adopted Ordinance 1011. Ordinance 1011 adopted the City's first phase of the Plan update as required by RCW 36.70A.130. On March 25, 2004, the Jensens filed a timely Petition for Review (**PFR**) challenging the City's Plan update.

During the month of April, the Board issued a Notice of Hearing, conducted the Prehearing Conference and issued the Prehearing Order (**PHO**). The PHO set the schedule and established the Legal Issues to be decided by the Board. There were no dispositive motions filed, but pursuant to a stipulation of the parties, the Board supplemented the record with two exhibits.

All prehearing briefing was timely filed. The prehearing briefing received is referenced in this Final Decision and Order (**FDO**) as: **Jensen PHB, Bonney Lake Response**, and **Jensen Reply**.

On August 12, 2004, the Board held a Hearing on the Merits (**HOM**) at the Board's offices in the 24th Floor Training Center, 900 4th Avenue, Seattle. Board Members Edward G. McGuire, Presiding Officer, Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioners were represented by Matthew L. Sweeney. Respondent City of Bonney Lake was represented by Lance M. Andree. Amanda Carr, Board Extern, also attended. Court reporting services were provided by Barbara Hayden of Byers & Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 12:00 p.m. The Board did not order a transcript of the HOM.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Petitioners challenge the City of Bonney Lake's adoption of an update to its Comprehensive Plan, as adopted by Ordinance No. 1011. Pursuant to RCW 36.70A.320(1), Bonney Lake's Ordinance No. 1011 is presumed valid upon adoption.

The burden is on the Petitioners to demonstrate that the actions taken by Bonney Lake are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [Bonney Lake] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Bonney Lake's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

¹ See Appendix A for more detail regarding the procedural history of this matter.

Pursuant to RCW 36.70A.3201 the Board will grant deference to Bonney Lake in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. As the State Supreme Court has stated, “Local discretion is bounded . . . by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearings Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent with the requirements and goals of the GMA.’” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001).

In affirming the *Cooper Point* court, the Supreme Court recently stated:

Although we review questions of law *de novo*, we give substantial weight to the Board’s interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed “[I]t is well settled that deference [to the Board] is appropriate where an administrative agency’s construction of statutes is within the agency’s field of expertise . . .

Thurston County v. Western Washington Growth Management Hearing Board, 148 Wn.2d 1, 15, 57 P.3d 1156 (2002).

III. BOARD JURISDICTION, PRELIMINARY MATTERS and PREFATORY NOTE

A. BOARD JURISDICTION

Pursuant to RCW 36.70A.290, the Board finds that the Jensens’ PFR was timely filed, and the Board has subject matter jurisdiction over the challenged ordinance, which updates Bonney Lake’s Comprehensive Plan. The Jensens’ standing is discussed *infra*.

B. PRELIMINARY MATTERS

At the HOM, the Board ruled on several supplementary exhibits and heard argument on Petitioners’ standing and the resulting scope of the Board’s review. This section notes the oral rulings on the supplementary exhibits.

Petitioners note that the City attached two exhibits to its Response Brief that were not part of the record. These are two City of Bonney Lake Planning and Community Development Department (PCDD) staff memos regarding the hearing examiner’s decision in Petitioners’ rezone request. Petitioners do not object to inclusion of these exhibits in the record. The Board construes the City’s attachment of these two staff reports as a motion to supplement the record, which the Board **grants**. The January 16, 2003 PCDD memo is assigned **HOM Exhibit No. 1** and the April 7, 2003 PCDD memo is assigned **HOM Exhibit No. 2**.

Additionally, the Board neglected to assign an Exhibit No. to the November 20, 2003 cover letter for the two Supplemental Exhibits that were stipulated to by the parties. Consequently, the November 20, 2003 letter from Matthew Sweeney to the Honorable Robert Young is assigned **HOM Exhibit No. 3**. Finally, Petitioners' standing is questioned by the City and is discussed *infra*. However, the Board did not receive a copy of a November 10, 2003 Letter from Matthew Sweeney to the Honorable Robert Young, which Petitioners contend is one of the letters that sets forth the scope of Petitioners' concerns and standing. Petitioners provided a copy of this letter at the close of the hearing; it is assigned **HOM Exhibit No. 4**.

C. PREFATORY NOTE

In the City of Bonney Lake's Response Brief, the City challenges Petitioners' standing as it relates to the scope of the Board's review. In essence, the City contends the Jensens' challenge is limited to a single Plan amendment that affects their property, not the resulting Plan adopted by the City's Phase 1, 2004 Plan Update, as adopted in Ordinance 1011 (Hereafter, **Phase 1 Plan Update**).² Under the heading Legal Issues and Discussion, *infra*, the Board first summarizes the challenged action, then addresses the scope of Petitioners' standing, and finally addresses the Legal Issues presented. The Board discusses several of the Legal Issues together and addresses them in the following order: first, Legal Issue 3 is discussed; then, Legal Issues 4, 1 and 2 are discussed together.

IV. LEGAL ISSUES AND DISCUSSION

A. THE CHALLENGED ACTION

Ordinance 1011 was adopted by the Bonney Lake City Council on January 27, 2004. The Ordinance was intended to "partially" comply with the GMA Update required to be completed by December 1, 2004.³ The Ordinance adopts Phase 1 of the City's Comprehensive Plan Update,⁴ *i.e.* Phase 1 Plan Update.

The following Plan elements were updated by the Ordinance: 1) Community Character Element; 2) Natural Environment Element; 3) Land Use Element; and 4) Housing

² The Ordinance and Phase 1 Plan Update are assigned Exhibit No. 1.

³ Ordinance 1011's title is, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE ADOPTING THE PHASE 1 COMPREHENSIVE PLAN AMENDMENT." It provides:

WHEREAS, the Growth Management Act requires the City to update its Comprehensive Plan and development regulations by December 1, 2004; and

WHEREAS, *the City has decided to update its Comprehensive Plan in two phases, the first of which is the subject of this Ordinance*; and

Ex. 1; Ordinance 1011, at 1 (emphasis supplied).

⁴ Section 1 of the Ordinance provides, "The attached Phase 1 Comprehensive Plan is adopted." *Id.*, at 2.

Element. At issue in this matter are the Land Use Element, including the Future Land Use Map (**FLUM**) and the Housing Element.

The primary focus of Petitioners' challenge is to the designations on the updated FLUM. These designations arose from a staff review of the City's Plan designations and implementing zoning for those designations.⁵ As part of its review and evaluation, the City's staff noted 65 inconsistencies between the FLUM designations and the corresponding zoning map designations. Ex. 68, at 1-11. These discrepancies provided the basis for the City's Plan Update to the Land Use Element.

The City explains that of the 65 inconsistencies identified between the Plan and development regulation designations, staff recommended that the *zoning* be revised to implement the Plan in 27 instances; and that the *Plan* be revised to be consistent with the zoning in 32 instances. In 6 cases⁶ the staff recommendation was that the inconsistency not be addressed, but that the City continue to allow a more intensive Plan designation than the implementing zoning permitted, but entertain a rezone application "if and when ripe for development." Bonney Lake Response, at 4, *citing* Ex. 68.

Of the 32 instances where the Plan was revised to be consistent with the zoning, 14 resulted in lower-density designations, 15 increased residential densities and the remainder did not affect densities. *Id.*, at 5-7. The City contends that the net effect of the Phase 1 Plan Update was to add new residential or higher-density density land use designations for 62 acres of land. *Id.*, at 7.

The City consists of approximately 4,288 acres⁷ with approximately 51% of the existing land uses in single family residential, 2% in multi-family and duplexes and 27% of the land within the City as vacant. Phase 1 Plan Update, Land Use Element, at 4-5; and Figure 4-1.

One of the areas where the Plan was changed to a lower density involved approximately 30 acres that included the 3.4 acres owned by Petitioners. In this instance the Plan was changed from a High Density Residential designation [allowing up to 20 units per acre] to a Medium Density Residential designation [allowing between five and nine units per acre]. Phase 1 Plan Update, FLUM; Ex. 68; and 71.

The City's Phase 1 Plan Update includes a chart [Figure 4-5 Future Land Uses, at 4-11] that breaks out the different Plan land uses categories and corresponding acreages. The following is an excerpt from that chart:

⁵ Apparently, the genesis for the staff review was a rezone request by the Jensens that would have realigned the zoning to implement the High Density Residential Plan designation.

⁶ The Board notes that Ex. 68 and 71 indicate 11 instances where this recommendation is made.

⁷ Figure 4-5, at 4-12 [partially extracted *infra*] indicates there are 5004 acres included in the Phase I Plan Update area with 3285 acres, or 66% of the area, devoted to residential uses.

BOARD TABLE 1
CITY OF BONNEY LAKE – FUTURE LAND USES

FLUM Designation	Intent and density at build-out	Implementation zone designation	Acres so designated on FLUM	% of City
Very Low Density Residential	Large-lot neighborhoods with extensive tree coverage, <i>up to two units per acre</i>	R-1(A) Very Low Density Residential	250	5%
Low Density Residential	Single family neighborhoods, <i>up to four units per acre</i>	R-1 Low Density Residential	2336	47%
Medium Density Residential	Neighborhoods of various housing types, with overall single family character of <i>five to nine units per acre</i>	R-2 Medium Density Residential	613	12%
High Density Residential	Apartments and condominiums, <i>up to 20 units per acre</i>	R-3 High Density Residential	86	2%
Total			3285	66%

(Emphasis supplied.)

It is significant that the City's FLUM includes designations for five unincorporated urban growth area (UGA) expansions that resulted from Pierce County's 2003 Plan Amendment cycle. The City requested that the County expand the UGAs surrounding the City of Bonney Lake to include these areas.⁸ The County obliged when it adopted Pierce County Ordinance No. 2003-103s on November 18, 2003. This Ordinance was challenged before the Board, including the five Bonney Lake UGA expansions. *See 1000 Friends of Washington & Friends of Pierce County v. Pierce County (1000 Friends III)*, CPSGMHB Case No. 04-3-0015, Order of Dismissal, (Jul. 7, 2004); and *Orton Farms, et al., v. Pierce County (Orton Farms)*, CPSGMHB Case No. 04-3-0007c, Final Decision and Order, (Aug. 2, 2004).

Following the County's November action of adding area to the unincorporated UGA around Bonney Lake, the City adopted the challenged Ordinance – on January 27, 2004. On June 8, 2004, months after the City had adopted its Phase 1 Plan Update and the Jensens' PFR was filed; the County adopted Ordinance No. 2004-37. This new enactment of the County deleted the Bonney Lake UGA expansions as adopted in Ordinance No. 2003-103s. *See 1000 Friends III, supra*. Therefore, these lands continue

⁸ The City's primary rationale for these requested UGA expansions was to create more regular boundaries for the City. See Supp. Ex. 1.

to be rural lands within the jurisdiction of the County. At the HOM, the City indicated that it had not taken any action, pursuant to the County's action, to correct its FLUM and related land use designations.

B. SCOPE OF PETITIONERS' STANDING

Applicable Law and Discussion

Position of the parties:

The City challenges Petitioners' standing. The City contends that Petitioners cannot attain APA standing since Petitioners are not prejudiced by the City's action and the Board cannot provide the relief (redress) requested. Bonney Lake Response, at 13. Further, the City challenges the scope of Petitioners' participation standing. The City asserts that the Jensens' standing "is limited to those matters raised at the local level [referring to the *Wells*⁹ test], and the Board's review is limited to the application of the R2 designation to the area including Petitioners property." The City contends that the City's Phase 1 Plan Update, other than the changes affecting Petitioners' property, is beyond the scope of the Petitioners' standing and the Board's review. *Id.*, at 12.

In reply, Petitioners contend, "It is undisputed that Petitioner appeared before and submitted written materials to the Bonney Lake City Council during the adoption process for the Comprehensive Plan Amendments." In a footnote, Petitioners refer specifically to two letters and attached documents that were submitted to the City; one was dated November 10, 2003 [HOM Ex. 4] and the second was dated November 20, 2003 [HOM Ex. 3]. Jensens' Reply, at 2.

The parties reiterated their arguments orally at the HOM and provided copies of relevant letters and attachments.

Board Discussion:

The test for participation standing, as stated in *Wells*, was codified into RCW 36.70A.280(4) during the 2003 Legislative Session. RCW 36.70A.280(4) provides:

To establish participation standing under subsection (2)(b)¹⁰ of this section, a person must show that his or her participation before the county or city was *reasonably related to the person's issue as presented to the board*.

⁹ *Wells v. Western Washington Growth Management Hearing Board*, 100 Wn. App. 657 (2000)

¹⁰ RCW 36.70A.280(2)(b) provides, "[A] person who has participated orally or in writing before the county or city regarding the matter on which review is being requested."

(Emphasis supplied.)

The Legal Issues presented to the Board for resolution challenge whether the City of Bonney Lake's adoption the Phase 1 Plan Update complies with: 1) the compliance review and evaluation requirements of RCW 36.70A.130; 2) the County-wide Planning Policy (**CPP**) consistency requirements of RCW 36.70A.210; 3) the UGA requirements of RCW 36.70A.110; and 4) whether the Phase 1 Plan Update was guided by, and consistent with, the Goals of the Act as stated in RCW 36.70A.020(1), (2) and (4).

The City contends the Board may only review these issues as they relate to the Medium Density Residential designation that affects Petitioners' property. On the other hand, Petitioners assert that their challenge is to the entire Phase 1 Plan Update, including, but not limited to Petitioners' property.

As noted *supra*, to challenge the entire Phase 1 Plan Update, through GMA participation standing, the oral or written testimony submitted by Petitioners to the City must be reasonably related to the issues as presented to the Board. The scope of Petitioners' standing, and the scope of the Board's review, is determined by the two letters and attachments [dated November 10 and 20, 2003] submitted by Petitioners' attorney, Matthew Sweeney, to the City during the Plan Update review process.

The November 10, 2003 Letter

This letter opens noting that, "My clients object to the proposed re-designation of their property and the adjoining properties, approximately 27 acres in all, from High Density Residential to Medium Density Residential." HOM Ex. 4, at 1. This sentence clearly establishes the Jensens' standing to challenge the Phase 1 Plan Update, as it relates to their property and the adjoining 27 acres. The City does not dispute this. However, the letter goes on to argue,

[The Phase 1 Plan Update] continues the trend of the City to encourage low-density residential sprawl directly contrary to the mandates of Washington's Growth Management Act. (Footnote omitted.) Instead of pushing out of the City limits into the City's existing and proposed urban growth area, the City is legally obligated to allow development within the City consistent with the City's existing land use plan.

Id. Petitioners then refer to, and attach, a copy of a report entitled Sprawl Report Card, prepared and "graded" by 1000 Friends of Washington. This "report card" ranks the performance and policies of various cities within the Central Puget Sound region. Petitioners note that the City of Bonney Lake's density rating was 30th among the 33 cities ranked. This report is cited for the contention that the City is "notorious for its low-density land patterns."

The letter continues listing additional concerns under the following headings: 1) Bonney Lake denies rezone requests consistent with its Comprehensive Plan [Noting the City's denial of Petitioners' request for a rezone that was consistent with the FLUM designation]; 2) Bonney Lake discourages infill [Noting the City's Very Low Density Residential FLUM and zoning designation]; 3) The [Phase 1 Plan Update] removes over 100 acres of High Density Residential [Noting that in addition to Petitioners land and the adjacent 27 acres, an additional 86 acres is being removed from the High Density designation and the UGA is being expanded]; and 4) The amendments violate the Housing Elements of the Plan [Noting that removal of multifamily housing options is contrary to the affordable housing goal and provisions of the City's Plan to provide for affordable housing]. *Id.*, at 2-3, and attachment.

This letter substantially broadens the scope of the concerns that Petitioners brought to the City's attention to be far beyond that of their own and adjacent property. Petitioners question Plan Update densities, infill policies and practices, removal of multi-family designations on significantly more land than their own and adjacent properties, and argue a resulting impact on affordable housing. These concerns, raised by Petitioners in their November 10, 2003 letter, are reasonably related to the issues presented to the Board for review. Based upon this letter alone, Petitioners have established participation standing to pursue their appeal. The second letter also supports this conclusion.

The November 30, 2003 Letter

The November 30, 2003 letter provided additional grounds supporting Petitioners' standing to seek review of the issues presented to the Board. That letter states, "My clients oppose *any reductions of density for any parcel in the City* because it is the City's duty under the law to increase densities within the existing City limits before expanding the City boundaries and especially before expanding the City's Urban Growth Area." HOM Ex. 3, at 1. Attached to this letter are excerpts from a Pierce County staff report regarding the City's requested UGA expansion, noting there are no City policies to minimize sprawl, encourage compact development and establish minimum densities. *Id.* (emphasis supplied). Also attached are excerpts from Pierce County's Buildable Land Inventory. Petitioners' letter notes that much of the land used in calculating capacity [High Density designation] for the City is being eliminated by the Phase 1 Plan Update. *Id.* This letter, and these materials, also broadens the scope of Petitioners' standing to challenge the City's Phase 1 Plan Update.

Conclusion – Petitioners' Standing

It is undisputed that Petitioners participated before the City of Bonney Lake during the City's Phase 1 Plan Update process. Petitioners' letters of November 10, 2003 and November 30, 2003 clearly establish the scope of the concerns Petitioners sought to bring to the attention of the City. Those concerns go beyond the Phase 1 Plan Update's effect upon their property and the adjoining acreage. These letters demonstrate Petitioners' concern with the City's Plan Update densities, sprawl, compact urban growth, infill

practices and policies, affordable housing and UGA expansions. These concerns coincide with the issues presented to the Board for review. Petitioners have demonstrated that their participation before the City, through the aforementioned letters, *was reasonably related to the issues as presented to the Board* for review. **Petitioners have participation standing, pursuant to RCW 36.70A.280(2) and (4), to pursue their appeal on the issues presented to the Board.**

C. LEGAL ISSUE NO. 3

The Board's PHO set forth Legal Issue No. 3:

- 3. Did the City fail to comply with RCW 36.70A.110(3) when it adopted the Ordinance because the City failed to locate urban growth first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development?***

Applicable Law and Discussion

RCW 36.70A.110 establishes the requirements for the sizing, location and designation of urban growth areas. These responsibilities are lodged with the counties. In this matter, it is Pierce County's responsibility to allocate OFM population, then in consultation with its cities, appropriately size, locate and designate urban growth areas.

The crux of Petitioners' complaint on this issue is that the City had no basis to pursue an expanded UGA from Pierce County. This is because the City's existing Land Use Element, FLUM and zoning demonstrate that the City is not achieving urban densities within its city limits. Therefore, an expansion of the UGA, while at the same time decreasing or maintaining low residential densities, was not justified and noncompliant with the Act. Jensens' PHB, at 21-24.

The City contends, "Petitioners are challenging a UGA expansion that never took place." Bonney Lake Response, at 26. Nonetheless, the City contends that Petitioners property, as well as the adjacent 27 acres, can be developed at urban densities. This is because the area was redesignated to Medium Density Residential, which permits five to nine units per acre. *Id.*

Board discussion:

Counties, not cities, designate UGAs. RCW 36.70A.110 directs county action. However, as discussed under the "Challenged Action," *supra*, the City did seek a UGA expansion in five different areas.¹¹ The County subsequently adopted the UGA

¹¹ See Supp Ex. 1, Staff Report & Draft SEIS, 2003 Annual Amendments Pierce County Comprehensive Plan, June 16, 2003; 2003 Application for Urban Growth Area Amendment, 12/2/02. Five applications for UGA expansions were filed by the City of Bonney Lake.

expansions as requested by the City, but has since repealed those UGA expansions. *See* Findings of Fact (**FoF**) 1 through 4 in Appendix B. Thus, contrary to the City's assertion, the requested UGA expansions *did take place*.

However, the County has since repealed those designations and those lands remain within the County's jurisdiction as rural, not urban, lands. Nonetheless, the City's FLUM still shows those lands as being within the Bonney Lake UGA and the City has assigned various urban land use designations for those areas. *See* Phase 1 Plan Update, FLUM, figure 2-4.

The City does not dispute that these areas are no longer within the City's designated UGA; the City has no jurisdiction over these lands. Consequently, there is no basis for the City to continue to assign land use designations on its FLUM for these areas. Therefore, the Bonney Lake Comprehensive Plan FLUM designations, in relation to the five "former" UGAs,¹² are clearly erroneous, and noncompliant with RCW 36.70A.110. They must be removed. The Board will remand the City's FLUM with direction to remove the five erroneous UGAs and corresponding land use designations.

Conclusion

The Bonney Lake Comprehensive Plan FLUM designations, in relation to the five erroneously designated UGAs, are **clearly erroneous**, and **noncompliant** with RCW 36.70A.110. They must be removed. The Board will **remand** the City's FLUM with direction to remove these five UGA expansions and corresponding land use designations.

D. LEGAL ISSUE NOS. 4, 1 & 2

The Board's PHO set forth Legal Issue No. 4:

- 4. Did the City fail to comply with RCW 36.70A.130(3) when it adopted the Ordinance because the City failed to properly revise its Comprehensive Plan to accommodate the urban growth projected to occur in the City?***

The Board's PHO set forth Legal Issue No. 1:

- 1. Did the City of Bonney Lake (the City) fail to be guided by certain goals of the Act [RCW 36.70A.020(1), (2) and (4)] when it adopted Ordinance No. 1011 (the Phase I Amendment to the City's Comprehensive that included a Land Use Element – the Ordinance) which changed the designation of 30 acres within the City boundary from High Density Residential to Medium Density Residential?***

The Board's PHO set forth Legal Issue No. 2:

¹² These five UGA expansions were identified by Pierce County as: U-5, U-6, U-7, U-8 and U-9

2. *Did the City fail to comply with the consistency requirements of RCW 36.70A.210 (County-wide Planning Policy – CPPs) and internal consistency requirements of RCW 36.70A.070(preamble) when it adopted the Ordinance while seeking to have its UGA expanded allegedly to accommodate the population allocated to it by Pierce County?*

Applicable Law

RCW 36.70A.130 governs the requirement that jurisdictions review and evaluate their Plans and regulations for continuing compliance with the Act. This section prescribes annual review requirements and periodic review and evaluation requirements. RCW 36.70A.130(3) pertains to requirement for counties to periodically review their designated UGAs. This subsection of the Act also provides:

In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215 [the buildable lands review].

(Emphasis supplied.)

By definition, each city is a UGA. *See* RCW 36.70A.110(1). Thus, the City is required to review the densities permitted within its boundaries for compliance with the Act.

RCW 36.70A.020 sets forth the goals of the GMA. The relevant goals challenged in this matter are Goals 1, 2 and 4, which provide as follows:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- ...
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock.

The relevant portion of RCW 36.70A.070 (preamble) requires comprehensive plan elements to be internally consistent and *each element must be consistent with the FLUM*. (Emphasis supplied).

RCW 36.70A.210 sets forth the procedures and requirements for CPPs. The CPP framework guides the development of county and city comprehensive plans. “This framework shall ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100.” RCW 36.70A.210(1). Thus, the City’s Plan and FLUM must be consistent with the CPPs.

Discussion

A portion of the argument presented by Petitioners on each of these three Legal Issues intertwines the UGA expansion issue which the Board has already addressed *supra* in Legal Issue 3. Therefore, Petitioners’ arguments, and the City’s response to those arguments, are not reflected *infra*, nor are they addressed further by the Board. Further, Petitioners’ arguments, and the City’s response, on Legal Issues 1, 2 and 4 are also intertwined; therefore these three issues are addressed together.

Position of the parties:

Petitioners argue that 1) the City has failed to correct existing low-density designations within its UGA that violate the Act; and 2) the Land Use Element [*i.e.* FLUM] fails to comply with GMA. Jensens’ PHB, at 26-27.

In response, the City asserts that the decision to redesignate Petitioners’ property and the adjacent area to Medium Density Residential was appropriate and Petitioners have failed to meet their burden of proof on this question. Bonney Lake Response, at 26-27.

Petitioners argue that the City’s Comprehensive Plan Land Use Element and FLUM are not consistent with Goals 1, 2, and 4 of the Growth Management Act because they perpetuate the City’s historic low-density sprawl. Jensens’ PHB, at 8-19. Petitioners contend that the Land Use Element and FLUM of the Plan Update perpetuate an existing sprawling pattern of land use, and therefore do not comply with the GMA. *Id.*, at 9.

Petitioners further argue that noncompliance is demonstrated by the City’s removal of 30 acres from the highest density (R-3) designation to a medium density (R-2) designation. Additionally, Petitioners claim that close to 100 acres were removed from the multi-family (R-3) land use designation. These actions illustrate that the City’s Land Use element and FLUM fail to provide sufficient land use densities that are urban in nature and that would provide for affordable housing. *Id.*, at 16-17. Therefore, Petitioners assert, the City failed to be guided by Goals 1, 2 and 4. *Id.*, at 17.

Petitioners also cite to the historical trend of sprawl in Bonney Lake evidenced by the City’s only permitting single-family residences on large lots. *Id.*, at 9. They note that

this trend has drawn critical comment from Pierce County, CTED and 1000 Friends of Washington concerning the continuing low residential densities within Bonney Lake. *Id.* Petitioners argue that while the City may assert that neighborhood character should have a priority over an increase in density, neighborhood character cannot be used as an excuse to maintain existing low densities. *Id.*, at 10-11.

Petitioners show that in the City's Plan, more than 50% of the area of the City is designated on the FLUM at Very Low Density and Low-Density land use designations; densities which do not assure *at least* 4 dwelling units per acre. Therefore, Petitioner contends, these designations violate the GMA. *Id.*, at 12. Petitioners point to CTED's letter addressing the City's residential designations to support their argument that it is impossible to reconcile the densities set forth in the Plan Update with GMA requirements. *Id.*, at 13.

Petitioners specifically address the 30 acres reduced in density from high to medium density, including Petitioners' property, and claim that this re-designation was clearly erroneous. *Id.*, at 17. Petitioners argue that the City should have changed the zoning [per their rezone application] to achieve consistency between the zoning and the FLUM while still maintaining the higher density levels needed to bring the City into compliance with the law. *Id.*

In response to these arguments, the City contends that it has discretion to choose between two valid land use designations [*i.e.* Medium or High Density Residential] and that the redesignation of Petitioners' and adjacent property to Medium Density was within the City's discretion. Bonney Lake Response, at 9-10 and 14-15.

Further, Respondent claims that the re-designation of Petitioners' property (and adjacent property) complies with the challenged goals of the Act because the Medium Density designation allows more than 4 du/acre [*i.e.* urban densities]. Therefore, the City asserts, this designation does not promote sprawl and does allow for affordable housing. *Id.*, at 15-17. Additionally, the City contends that 62 acres on the FLUM were redesignated to higher densities, therefore encouraging affordable housing. *Id.*

Respondent also contends that: 1) Petitioners lack standing to challenge the City's use of the R-1 and R-1A FLUM designations; 2) Respondent's use of these designations does not violate the GMA; 3) Petitioners have not demonstrated that the net density of the City's land use designations fails to meet the 4 du/acre requirement for urban density;¹³ and 4) the evidence before the Board demonstrates that the City's land use designations clearly accommodate net densities in excess of 4 du/acre. *Id.*, at 18-22.

¹³ The City suggests, "The R-1 designation allows for residential densities *above* 4 du/acre, and is therefore consistent with the GMA as a matter of law." Bonney Lake Response, at 19; (emphasis supplied).

Petitioners allege that the City's Comprehensive Plan Amendments are not consistent with certain policies of the Pierce County County-wide Planning Policies (CPPs),¹⁴ as required by RCW 36.70A.210. Jensens' PHB, at 19-21. Petitioners' argument for inconsistency is that the City's Land Use Element and FLUM violate the policy directives of the CPPs of encouraging concentrated development within existing UGAs by reducing or maintaining impermissible low-densities within UGAs. *Id.*, at 20-21.

Respondent first claims that Petitioners have failed to meet their burden of proof on this issue with regard to Petitioners' property, because the re-zoning of their property was consistent with other City and County planning policies. Bonney Lake Response, at 22.

Respondent goes on to argue that the challenged amendment furthers internal consistency goals by bringing Comprehensive Plan designations into alignment with the zoning map where they were previously incompatible. *Id.*, at 22-23. For the reasons set forth in the staff report and the decision of the hearing examiner, the City made the decision to redesignate Petitioners' property from High to Medium Density Residential; the City disputes that this action was an effort to achieve internal consistency inappropriately. *Id.*, at 23.

Finally, Respondent asserts that the re-designation of Petitioners' property is not inconsistent with the CPPs and that Petitioners have failed to demonstrate that the Medium Density re-designation of their property is not urban growth or that it promotes sprawl. *Id.*, at 24.

Board discussion:

The City action that is subject to the Board's review is the City's adoption of the Phase 1 Plan Update as summarized *supra*. It is undisputed that the Phase 1 Plan Update is intended to partially¹⁵ comply with the GMA mandated "*compliance review*" to be completed by December 1, 2004. *See* RCW 36.70A.130.

The "*consistency review*" the City undertook in analyzing whether its Plan, FLUM and zoning were consistent was an excellent approach for identifying inconsistencies among these documents and also for setting forth options to address the discovered inconsistencies. The City correctly notes that in resolving inconsistencies among

¹⁴ Petitioners cite Pierce County CPPs 6.1, 6.2 and 6.3, which require the policies in all the cities' and the County Comprehensive Plans to:

6.1 Provide for more choices in housing tights (*sic* types) and *moderate increases in density to exceed at least an average net density of four units per acre.*

6.2 *Support infill and compact development.*

6.3 Provide for land uses that encourage travel by foot, bike and transit.

Jensens' PHB, at 20; (emphasis supplied).

¹⁵ As noted previously, this phase of the City's compliance review addresses the Community Character, Natural Environment, Land Use and Housing Elements of the City's Plan. Apparently, the Transportation and Capital Facilities Elements will be the subject of the City's Phase 2 Plan Update.

designations contained within these documents and maps the City has discretion in deciding which document to modify – so long as the choices comply with the goals and requirements of the Act.

Petitioners' challenge is directed at three different aspects of the City's adoption of the Phase 1 Plan Update. First, Petitioners challenge the action as it relates to their property and adjacent properties; second, they challenge whether the FLUM changes in the Phase 1 Plan Update actually reduce the acreage available for development at urban densities; and third, Petitioners assert that in its Phase 1 Plan Update the City neglected to revise existing residential densities within the City to comply with the urban density requirements and goals of the Act. Each of these aspects is addressed in turn.

Medium Density Residential Designation of Petitioners' and Adjacent Properties

Regarding Petitioners' property and the adjacent properties that were changed in the FLUM designation from High to Medium Density Residential, the City has discretion to make this revision. The Plan FLUM and zoning designations are now consistent and the development regulations implement the Plan. This is so even though the overall density of the affected area [approximately 30 acres] was decreased from "up to 20 units per acre" down to "between five and nine units per acre." This is because the Medium Density designation still maintains and encourages urban densities [*i.e.* 4 units per acre or more].

However, the Board notes that there are only 86 acres (2%) in the entire City that are designated High Density Residential.¹⁶ Redesignating Petitioners' property, and the surrounding area [approximately 30 acres], undoubtedly made a big dent in the land available for higher density multi-family development. Nonetheless, the Board concludes that the specific FLUM amendment changing Petitioners' property, and adjacent properties, from High to Medium Density Residential, in order to achieve consistency between the Plan, FLUM and zoning was **not clearly erroneous**, was within the City's discretion, **complies** with the requirements of the Act [RCW 36.70A.130, .070(preamble) and .210] and **was guided** by Goals 1, 2 and 4 [RCW 36.70A.020(1), (2) and (4)].

The Board notes that had Petitioners challenged the development regulations at the time they were adopted, and asserted that the R-2 zoning designation was inconsistent with and did not implement the High Density Residential Plan and FLUM designations, Petitioners would have prevailed. This is because the Act requires the development regulations to be consistent with and implement the Plan and FLUM, which the R-2 zoning designation did not do. However, by this amendment, the City has removed that inconsistency.

¹⁶ See Board Table 1, *infra*, based upon Table 4-5 from the Phase 1 Plan Update, at 4-11.

Plan Update Revisions – the 65 Inconsistencies

Petitioners claim that the residential densities resulting from the Phase 1 Plan Update were *reduced on over 100 acres* of land; while the City counters that the net result of their inconsistency review was to *increase residential densities on approximately 62 acres*. See Jensens' PHB, at 16-17, Bonney Lake Response, at 5-7 and 15-17; also see the Challenged Action, *infra*.

While it is clear that the parties dispute whether the net effect of the Phase 1 Plan Update was a reduction in residential densities for 100 acres or an increase in residential densities on 62 acres, neither party provided, or pointed to, any record evidence¹⁷ that included acreage figures regarding the changes to support either assertion. Therefore, the Board concludes that Petitioners **failed to carry the burden of proof** in demonstrating noncompliance with the identified provisions of the Act.

The Board recognizes that only the Plan was amended by Ordinance 1011; not the City's zoning and development regulations. However, the Board notes that Exs. 68 and 71 identify 11 areas¹⁸ where the Plan and FLUM designations permit higher densities or more intense uses than the existing zoning designations allow. The staff recommendation for these 11 areas does not resolve the inconsistency. In these instances the staff recommendation is to "Entertain a rezone if and when ripe for development." Taking this avenue would be noncompliant with the Act since the unchanged zoning designations *would not implement the Plan and FLUM designations*, as required by RCW 36.70.040 and .130.

The City has the duty to maintain consistency between its Plan and regulations that implement its Plan; it may not ignore or delay this requirement and shift the duty to project proponents by "entertain[ing] rezones if and when ripe for development." If the City did not amend its Plan to remove all the inconsistencies identified and documented in Ex. 68, it must now amend its *development regulations* to allow the densities and uses authorized in the Plan and FLUM in order to be consistent with *and implement the Plan*

¹⁷ The principle exhibits referenced regarding the City's inconsistency review are Exs. 68 and 71, neither of which contains acreage figures for the inconsistency areas. While the Plan Update itself contains Tables with acreage included (*i.e.* Figure 4-5) these Tables do not indicate the increased or decreased acreage within the designation categories. However, in reviewing the Phase 1 Plan Update's Housing Element the Board discovered the following statement,

In its 2004 Comprehensive Plan amendment the City changed the land use designation of 1) a 28-acre area from "medium density residential" to "high density residential," 2) an 18-acre area from low-density residential to "medium density residential," and 3) 16 acres of land from Commercial to Mixed Use. These map amendments increase the supply of land for affordable housing while encouraging increased density.

Phase 1 Plan Update, Housing Element, at 5-4. However, the Board failed to discover any text summarizing the acreage where densities were decreased.

¹⁸ See Ex. 68 inconsistency area numbers: 9, 10, 11, 30, 37, 46, 49, 50, 51, 52 and 61.

and FLUM designations. RCW 36.70A.130 requires the City to complete its compliance review by December 1, 2004 or be subject to further challenges before the Board.¹⁹

Residential Densities in the Phase 1 Plan Update

Although the City of Bonney Lake reviewed and evaluated its Plan, FLUM and development regulations for *consistency* and adopted the Phase 1 Plan Update, its review falls short of the compliance review required by RCW 36.70A.130. The December 1, 2004 compliance review requires the City to “take legislative action to review, and if needed, revise its comprehensive plan and regulations *to ensure the plan and regulations comply with the requirements* of this chapter [by December 1, 2004].” RCW 36.70A.130(1).

Compliance with the GMA is more than a Plan, FLUM and development regulation “consistency review.” A significant directive within the review process is for jurisdictions to determine whether their existing Plan and regulations comply with *all* the goals and requirements of the Act, not just the GMA’s various consistency requirements. Petitioners assert that the Plan Update must comply with the goals and requirements of the Act, including accommodating urban growth at urban densities. The Board now addresses the broader challenge to the Plan Update’s permitted urban densities.

First, the Board notes that Bonney Lake’s Phase 1 Plan Update states, “Bonney Lake clearly lacks adequate affordable housing.” Phase 1 Plan Update, Housing Element, at 5-4. So what does the Plan do to lay the foundation to remove this deficiency?

The City focuses its approach on meeting affordable housing needs through: Multi-family housing (R-3, C-2 and C-3 zones), manufactured or mobile homes (R-2 and RC-5 zones), duplexes (R-2 and R-3 zones), small lot developments (through planned unit developments) and accessory dwelling units (R-2, R-3 and RC-5 zones). Other than small lot developments, the City has not indicated its strategy for encouraging affordable single-family housing units in the Very Low-Density Residential (R-1A) or Low-Density Residential (R-1) areas. Likewise, with over half the City designated for low-density residential uses, the Plan falls short of providing for a variety of residential densities. Thus, by limiting the scope of its affordable housing strategy, the City’s Plan Update has not been guided by Goal 4 of the Act.

Petitioners argue that the City’s historical trend of sprawl [low density residential development through large lots] has not been corrected in the Phase 1 Plan Update as required by RCW 36.70A.130. Petitioners assert that the City ignored specific requirements and goals of the Act, certain CPPs, its own Plan, and that the FLUM is inconsistent with each of these directives.

¹⁹ See Section VI, Order, including Compliance Schedule, *supra*.

To support their assertions, Petitioners point to: 1) the text and FLUM in the Phase 1 Plan Update (Ex. 1); 2) the Pierce County Buildable Lands Report (Supp. Ex. 2); 3) the “Sprawl Report Card” prepared by 1000 Friends of Washington²⁰ (Ex. 25.2); 4) the June 16, 2003 County Staff Report (Supp. Ex. 1); and 5) a comment letter prepared by the Washington State Department of Community, Trade and Economic Development (CTED) (Ex. 29.1). Each of these documents was clearly part of the record during the Phase 1 Plan Update process. *See* Jensens’ PHB, at 9 -16 and 26-27.

The focus of the City’s response to these assertions is that Petitioners lack standing to question the City’s overall urban densities, especially those not involving Petitioners’ property. Bonney Lake Response, at 18. Alternatively, the City contends Petitioners have not met their burden of proof in demonstrating that the City’s land use designations fail to meet the 4 dwelling units per acre (**du/acre**) density requirement and that the evidence before the Board demonstrates that the City’s land use designations clearly accommodate net densities in excess of 4 du/acre. *Id.*, at 18-22.

The Board now turns to the evidence presented. The Phase 1 Plan Update includes the following language:

As of 2002, the *gross residential density inside the city limits is 1.45 dwelling units per acres*. (This represents acres of residentially zoned land divided by the number of households. The number of households was derived by dividing the April 2002 OFM population estimate by the 2000 Census’s average household size, 2.9645.) After deducting the area of streets, critical areas, and other unbuildable areas, the *net residential density is approximately 2.76 units per acre*. (The net density calculation is based mainly on 2002 tax parcel data.) ***These residential densities are far below the minimum of four units per acre required under GMA*** according to the Central Puget Sound Growth Management Hearings Board. However, recent plats have been developed at much higher densities than pre-existing neighborhoods.

Phase 1 Plan Update, at 4-5, (**bold** and *italicized* emphasis supplied).

With this statement, the City acknowledges noncompliance with the GMA’s requirements, but what steps did the City take to cure this deficiency?

On this same page of the Plan, a Table shows acreage of *existing land uses* and indicates that existing single family residences, including mobile homes, comprise over 51% of the

²⁰ This document, prepared in 2000, ranked thirty-three cities in Snohomish, King, Pierce and Kitsap County, based upon 1000 Friends’ view of compliance with the Act related to several factors, including density (as a measure of sprawl). The density parameter was based upon population per acre of residentially zoned land, zoning designations for multi-family housing, and required minimum lot sizes for single-family zones. The report’s Overall Density Rankings for the 33 cities evaluated, ranked Bonney Lake as 30th – among the “Bottom Performers.” *See* Ex. 25.2, Sprawl Report Card, Table 4, at 9.

total area in the City. Multi-family and duplexes make up 0.9% of the land in the City and 27% of the area in the City consists of vacant land. *Id.*

Several pages later in the Phase 1 Plan Update, a Table summarizing *future land uses* indicates that the FLUM designates:

- 5% (250 acres) of the City to be Very Low Density Residential (*up to* two units per acre);
- 47% (2,336 acres) of Bonney Lake to be Low Density Residential (*up to* four units per acre);
- 12% (613 acres) to be Medium Density Residential (five to nine units per acre);
- 2% (86 acres) planned for High Density Residential (*up to* 20 units per acre); and
- 0.4% (20 acres) as Mixed used including multi-family.

Id., Table 4-5, at 4-12; (emphasis supplied); *see also* Board Table 1, *infra*.

While about 14% (almost 700 acres) is planned for densities between five and 20 units per acre in the Phase 1 Plan Update, more than 2500 acres (53%) is designated in the future to allow only “*up to* four dwelling units per acre” – a 4 du/acre maximum, not minimum. On their face, these designations, as they relate to achieving urban densities and compact urban growth fall short of the Act’s goals and requirements.

Also these designations are inconsistent with CPP 6.1 which directs that the City’s Plan include, “moderate increases in density *to exceed at least an average net density of four units per acre.*” Likewise, the Phase 1 Plan Update includes Goals and Policies related to the efficient use of land, infill and affordable housing, which the City has ignored by adopting these designations. *See* Phase 1 Plan Update, Goal 4-1, Policies 4-1a, 4-1b, Goal 4-4, Policies 4-4a, 4-4b, Goal 4-6, Policies 4-6a, 4-6b, Goal 4-7, Policies 4-7a and 4-7b, at 4-11, 4-13.

Further, Pierce County’s Buildable Lands Report (**BLR**) also verifies that between 1995 and 2000, (*i.e.* the new development since the City’s Plan was adopted), the *average residential density was 3.35 du/gross acres* (based on permits) or *2.98 du/gross acres* (based on plats). However, the BLR acknowledges that densities are at least increasing somewhat with newer developments. *See* Supp. Ex. 2, BLR, Tables 3, 4 and 6, at 29-30.

The BLR clearly demonstrates that the City is not achieving urban densities. More importantly, the Very Low and Low-Density Residential provisions of the Plan Update, verify that the City is not providing for appropriate urban densities.

It is significant that the BLR indicates that Bonney Lake’s “Comprehensive Plan Assumption” for residential densities is between 4-6 du/gross acre. *Id.* The Board questions whether this assumption could be borne out given that over half the land in the City is designated on the FLUM with a *maximum* density of 4 du/acre, while only 15%

permits 5-20 du/acre. But how much of the land within the City is potentially available for development – vacant or underdeveloped?

Table 8 of the BLR addresses the “Supply of Land/Lots for Residential Development.” This Table depicts the amount of vacant and undeveloped land within the Single Family areas (R-1); Duplex, Mobile Home and Single Family areas (R-2); and Multi-Family areas (R-3). The Table starts with gross acres that are vacant and underdeveloped in each land use Plan and zoning category, and then deducts acreage for roads, critical areas, parks, open space, stormwater facilities, non-residential uses and land unavailable for development. It then concludes that the *total adjusted net* acres available for development within R-1 area²¹ is 377.51 vacant or underdeveloped acres; within R-2 areas, 74.54 acres are available; and within the R-3 areas, there are 36.86 vacant and underdeveloped acres available. Planning for residential development on these acres at appropriate GMA urban densities, coupled with encouraging increased densities for infill and redevelopment opportunities, would go a long way toward countering the City’s prior trend of permitting predominantly large lot low-density development.

Not only did the BLR verify noncompliant GMA densities within the City of Bonney Lake, but the County’s Staff Report and DSEIS recommending against the City’s five UGA expansion requests noted concerns with Bonney Lake’s low urban densities.

The City has provided no information regarding the monitoring or evaluation of the housing affordability objectives set forth within the City’s Comprehensive Plan. Regarding density objectives, the City’s Comprehensive Plan sets forth a target density of 4 to 6 dwelling units per acre for new development. An evaluation of the densities being achieved within the City is included within the Buildable Lands Report. This report indicates that while there is a trend towards increasing density within the City, *on average new development is not achieving four dwelling units per acre*. Review of the proposed UGA amendment by the Office of Community Development [CTED] also indicates concern regarding the densities being achieved within the City.

Supp. Ex. 1, at 315, 320, 325, 331 and 335-336 (emphasis supplied).

The County staff report continued, “While the City can demonstrate that the proposed UGA will accommodate at least 20 years population growth, it has not demonstrated that this growth is occurring at urban densities (*i.e.* 4 du/acre). Failure to achieve urban densities and expanding the UGA contribute to unnecessary sprawl and is not consistent with the GMA.” *Id.* The Board recognizes that these comments were made in the context of the County’s review of the requested UGA; nonetheless, the City was on notice that

²¹ The Board assumes that this figure include lands within the Very Low-Density Residential (R-1A) designation.

the County posed significant GMA compliance questions regarding the urban densities in the City.

Also, CTED's October 21, 2003 letter to the City should have raised additional "red flags" for the City to address in its Phase 1 Plan Update. In this letter, CTED was commenting on the Phase 1 Plan Update, not the UGA expansions. The letter states:

We have concerns about the following that you should address *before you adopt your comprehensive plan amendments* [the Phase 1 Plan Update].

Urban Densities

Two of the proposed residential land use designations are difficult to reconcile with the city's duty to ensure that development within the city occurs at urban densities. The CPSGMHB has found that residential densities less than four dwelling units per acre (du/acre) net does not constitute urban density, a requirement of the GMA. Bonney Lake's draft plan includes the Very Low-Density Residential designation which permits densities of only two du/acre maximum, and the Low-Density Residential designation which permits up to four du/acre. *It is clear that the former would not produce urban densities, and it is highly unlikely that the latter would either.*

*Four du/acre net should be considered the **minimum** urban density, not the maximum.* Developing land in urban areas at higher densities can help keep development away from forest and agricultural areas, and reduce pressure on rural lands. Under the GMA, there is clear intent that urban services be available to development that is urban in nature. Therefore, development density should be no lower than what can be cost-effectively served with urban infrastructure. *This is the rationale for the four du/acres minimum.* Generally, this is the minimum density at which urban services can be effectively provided. Furthermore, densities higher than this would allow the city to more cost-effectively provide urban services, allow for more amenities, promote walking and other non-motorized forms of transportation, and conserve open space. These achievements would go a long way toward fulfilling the goals and policies of Bonney Lake's Comprehensive Plan.

Development densities of lower than four du/acre are more difficult to reconcile with the goals of the GMA. Typically this density occurs as a means of protecting critical areas. In making a designation that is less than four du/acre, the record should show that:

- Conditions, such as the presence of critical areas, preclude achieving higher densities;

- Measures other than large lot zoning have been considered and determined to be infeasible;
- The extent of the larger lots only covers that area necessary for the protection of critical area, and is an exception, not the predominant pattern;
- Low densities do not interfere with the city's ability to accommodate its allocated growth; and
- Low densities do not interfere with the cost-effective provision of urban services.

Bonney Lake's Draft Comprehensive Plan does not show the rationale for creating the Very Low-Density and the Low-Density designations with maximums below the level of urban density as established by the CPSGMHB. Nor does it provide evidence that there has been a public discussion of measures other than large lot zoning to accomplish its goals, or discuss the impacts of density on service provision. Given the overall densities in Bonney Lake, it would be difficult to argue that low densities are an exception. Therefore, there is no clear justification that is consistent with the GMA for these designations. Furthermore, in letters dated May 20 and October 2, 2002, CTED has already brought this issue to Bonney Lake's attention, informing Bonney Lake of the GMA minimum urban density requirement of 4 du/acre.

We urge you to revisit the densities for these land use designations before adopting the comprehensive plan. When considering what an appropriate urban density should be, we suggest that you review guidance from the CPSGMHB, offered in the following cases [citations omitted²²].

On page 4-6 of Bonney Lake's draft Plan, Figure 4-2 presents the calculations of housing capacity and assumed density for each residential plan designation. *The assumed density in the Single Family Residential designation/R-1 zone is 4.356 du/acre. Given the maximum permitted density in the R-1 is four, and the maximum in the Very Low-Density Residential (which apparently should be include in this category) is two du/acre, we can envision no circumstances under which the density could be as high as 4.356 du/acre. Nor would it be safe to assume that these areas would necessarily build out even at their maximum permitted densities of four and two du/acre. Since there are no minimum densities for these designations, actual densities could be considerably lower.*

²² The Board adds to the list provided by CTED to include: *Master Builders Association, Terry L. Brink, Edward Zenker, Associated General Contractors and Pierce County Chamber of Commerce – South County Division v. Pierce County (MBA/Brink)*, CPSGMHB Case No. 02-3-0010, Final Decision and Order, (Feb. 4, 2003); *MBA/Brink*, Order Finding Partial Compliance and Continuing Invalidity, (Sep. 4, 2003); and *MBA/Brink*, Second Compliance Order, (Jan. 21, 2004).

Furthermore, the assumed density in the Multiple Residential designation/R-3 zone is 20 du/acre. Given the permitted density tops off at 20, there is no certainty that this maximum will be achieved. We suggest that you revisit the calculations and assumptions underlying Figure 4-2, and more generally the Land Use Element as a whole.

Ex. 29.1, at 2-3. Again, the City was advised that it needed to “revisit the densities for [the residential] land uses designations before adopting the comprehensive plan.”

In the context of a compliance review, CTED’s advice was especially worth heeding. CTED’s letter expresses familiarity with and understanding of this Board’s prior Orders on the question of appropriate urban densities - Board Orders which this Board has upheld, affirmed, and applied consistently since 1995.

Finally, Petitioners’ letters of November 10 and 30, 2003 included, or referenced these materials and made the same points, raising the same concerns.

The Phase 1 Plan Update does not address the GMA compliance issues raised by the BLR, the County, CTED and Petitioners. It is obvious from the adopted Phase 1 Plan Update that the City ignored these serious concerns.

Petitioner has clearly met the burden of proof in demonstrating noncompliance with the goals and requirements of the Act. Petitioner has demonstrated that the City of Bonney Lake’s Phase 1 Plan Update: 1) does not comply with the compliance review requirements of RCW 36.70A.130; 2) the FLUM designations for Very Low Density and Low Density Residential and corresponding text in the Land Use Element are not internally consistent, as required by RCW 36.70A.070(preamble) or consistent with the direction provided by the CPPs, as required by RCW 36.70A.210; and 3) these same FLUM designations and corresponding text in the Land Use Element (Very Low Density and Low Density) for residential land uses do not promote urban densities and are not guided by, and do not comply with Goals 1, 2 and 4 – RCW 36.70A.020(1), (2) and (4).

The City’s failure to revise these residential designations in the Phase 1 Plan Update was clearly erroneous. The Board will remand the Phase 1 Plan Update, as adopted by Ordinance 1011, with direction to the City to amend, modify or otherwise revise these land use designations to provide appropriate urban densities as required by the goals and requirements of the Act.

Conclusion

The Board concludes the City of Bonney Lake’s Very Low Density Residential and Low-Density Residential FLUM designations and corresponding text in the Land Use Element of the Phase 1 Plan Update, **do not comply** with the compliance review requirements of RCW 36.70A.130; **do not comply** with the internal consistency requirements of RCW 36.70A.070(preamble) because these FLUM designations are not internally inconsistent

with text in the Land Use Element; **do not comply** with the CPP consistency requirements of RCW 36.70A.210; and these same residential designations **do not comply with**, and **were not guided** by RCW 36.70A.020(1), (2) and (4) because they do not promote urban densities or affordable housing and promote sprawl within the City of Bonney Lake. The City's failure to revise these residential FLUM designations and corresponding text in the Land Use Element to allow appropriate urban densities in the Phase 1 Plan Update was **clearly erroneous**. The Board will **remand** the Phase 1 Plan Update, as adopted by Ordinance 1011, with direction to the City to amend, modify or otherwise revise the Very Low-Density and Low-Density Residential FLUM land use designations and text in the Land Use Element to provide for appropriate urban densities as required by the goals and requirements of the Act, including the CPPs and Plan.

V. INVALIDITY

RCW 36.70A.302 provides in relevant part:

- (1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:
 - a. Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - b. Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter . . .

The Board has determined, *supra*, that the City of Bonney Lake's adoption of the Phase 1 Plan Update (Ordinance 1011), specifically the retention of the Very Low-Density and Low-Density Residential land use designations on the FLUM, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.110, .130, .070(preamble), and .210, and were **not guided by** Goals 1, 2 and 4 – RCW 36.70A.020(1), (2) and (4). The Board's Order, *infra*, **remands** the Phase 1 Plan Update as adopted by Ordinance 1011 to the City with direction to take legislative action to achieve compliance with the goals and requirements of the Act as interpreted and set forth in this Order.

The question now before the Board is whether any of these noncompliant provisions of Bonney Lake's Phase 1 Plan Update substantially interfere with the fulfillment of the Goals of the Act. The Board notes that while Petitioners' PFR did not request invalidity as relief, it was requested in Petitioners' briefing. *See* Jensens' PHB, at 1.

The Board has stated that invalidity is a remedy available to the Board rather than a legal issue that must be posed or a remedy that must be requested in a PFR or briefed in prehearing briefing. "The Board has authority to consider invalidity *sua sponte* regardless of whether or not a party raises it during the proceeding. RCW 36.70A.302(1)

and WAC 242-02-831(2).” *King County v. Snohomish County [Cities of Renton and Edmonds – Intervenor]*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 23, 2003), at 18.

First, the Board **declines** to enter a determination of invalidity regarding the City’s inclusion, and designation, of five erroneous UGA areas on its FLUM. At the time the FLUM was adopted, the County had not repealed the five UGA designations. They have since been repealed and these areas remain rural lands within the County’s jurisdiction, not the City’s. In this Order, the Board is simply directing the City to revise the UGA boundaries to exclude these five areas and also remove the urban designations that appear on the FLUM. Therefore, regarding this remand item, there is no substantial interference with any of the goals of the Act. *See* Appendix B, FoF 1-4.

However, the Board concluded *supra*, that the City’s adoption of the Phase 1 Plan Update, specifically the FLUM designations and corresponding text in the Land Use Element for the Very Low-Density and Low-Density Residential designations, failed to be guided by, and comply with, Goals 1, 2 and 4. Do these noncompliant provisions substantially interfere with the fulfillment of these Goals?

Goal 1 provides, “Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.” The Board finds that permitting urban development within the City of Bonney Lake at densities of *up to* two units per acre (Very Low-Density Residential) or *up to* four (Low-Density Residential) on more than half the City’s land area does not encourage compact urban growth at appropriate urban densities where public facilities can be provided in an efficient manner.

Goal 2 provides, “Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.” The Board finds that the densities permitted by the Land Use Element for the Very Low-Density and Low-Density Residential designations on the City’s FLUM are not appropriate urban densities; they ensure the continuation of sprawling low-density development, rather than reducing it.

Goal 4 provides, “Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock.” Although the Board has found that the City’s Phase 1 Plan Update was not guided by this Goal; the City does provide for multi-family housing, mobile and manufactured housing and accessory dwelling units, albeit only in a small portion of the City’s land area. However, the City could make improvements in providing for, and encouraging, affordable housing by designating more land for multi-family uses, targeting single-family areas to accommodate affordable housing, allowing accessory dwelling units in single family zones, and increasing the variety of residential densities. However, at this time, the Board does not find substantial interference with this goal.

Absent a determination of invalidity, new development within the City could vest and proceed at these noncompliant residential densities. Therefore, based upon the findings and conclusions set forth in the Board's discussion of Legal Issues 4, 1 and 2 *supra*, and the Findings of Fact in Appendix B, the Board concludes that the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element substantially interfere with the fulfillment of Goals 1 and 2 – RCW 36.70A.020(1) and (2). Therefore, the Board enters a **Determination of Invalidity** for the City of Bonney Lake's Phase 1 Plan Update, specifically the Very Low-Density and Low-Density Residential designations on the FLUM, and corresponding text in the Land Use Element.

VI. ORDER

Based upon review of the GMA, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having considered and deliberated on the matter, the Board ORDERS:

1. The City's inclusion of the five repealed UGA expansions and urban designations for those areas on the FLUM was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.110.
2. The City of Bonney Lake's adoption of the Phase 1 Plan Update, specifically the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.130, .070(preamble), .210 and was **not guided by** Goals 1 and 2 – RCW 36.70A.020(1) and (2).
3. Further, the adoption of the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element, substantially interfere with the fulfillment of Goals 1 and 2 – RCW 36.70A.020(1) and (2); therefore, the Board enters a **Determination of Invalidity** with respect to these FLUM designations and corresponding text in the Land Use Element.
4. The Board **remands** Ordinance 1011, the Phase 1 Plan Update, specifically the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element and the five repealed UGAs and their corresponding urban designations on the FLUM, to the City of Bonney Lake with direction to take legislative action to: a) delete the five erroneous UGAs; and b) take appropriate legislative action to amend, modify or otherwise revise the Very Low-Density and Low-Density Residential FLUM land use designations and text in the Land Use Element to provide for appropriate urban densities as required by the goals and requirements of the Act, as well as the CPPs and Plan.

5. The Board recognizes that the City intended to complete its Comprehensive Plan and development regulation revisions in two phases to be completed by December 1, 2004, as required by RCW 36.70A.130(4). The Board also acknowledges that the City's Phase II Plan Update (the Capital Facilities and Transportation Elements) must be consistent with the remanded Land Use Element and FLUM. Additionally, the City's development regulations must be revised to be consistent with and implement the Plan. Therefore, pursuant to RCW 36.70A.300(3)(b), the Board has determined that, but for the correction to the FLUM regarding the UGAs, the City's task is of unusual scope and the compliance schedule will be extended beyond the statutorily required 180-days. The compliance schedule for the remand period is as follows:

- By no later than **November 10, 2004**, the City shall revise its FLUM to delete the five UGAs and the related urban designations. The City shall transmit copies of the revised FLUM and enacting Ordinance to the Board by no later than **November 17, 2004**. Upon receipt of the City's corrected FLUM and adopting Ordinance, the Board will issue a finding of partial compliance. Full compliance and the rescission of invalidity will be contingent upon the City achieving compliance by completing its remaining work according to the following schedule.
- By no later than **June 20, 2005**, the City shall take appropriate legislative action to achieve appropriate urban densities and bring its Plan (FLUM and Land Use Element) into compliance with the goals and requirements of the GMA, as interpreted and set forth in this FDO.
- By no later than **June 30, 2005**, the City shall file with the Board an original and four copies of a Statement of Action Taken to Comply (SATC) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation, with attachments, enacted in order to comply. The City shall simultaneously serve a copy of the SATC, with attachments, on Petitioners. By this same date, the City shall also file a "**Remand Index**," listing the procedures (meetings, hearings etc.) occurring during the remand period and materials (documents, reports, analysis, testimony etc.) considered during the remand period in taking the remand action.
- By no later than **July 15, 2005**,²³ the Petitioners may file with the Board an original and four copies of Response to the City's SATC.

²³ July 15, 2005 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

Petitioners shall simultaneously serve a copy of their Response to the City's SATC on the City.

- By no later than **July 22, 2005**, the City may file with the Board an original and four copies of the City's Reply to Petitioners Response, if any. The City shall simultaneously serve a copy of such Reply on Petitioners.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. July 28, 2005** at the Board's offices.

If the parties so stipulate, the Board will consider conducting the compliance hearing telephonically. If the City takes legislative compliance actions prior to the June 20, 2005 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 20th day of September 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member (Board Member Pageler files a
separate concurring opinion)

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

BOARD MEMBER PAGELER CONCURRING OPINION

I concur with the conclusions reached by my colleagues in this Final Decision and Order. However, I write separately regarding GMA Planning Goal 4. I would have gone further in the analysis presented and would have proposed a broader range of options for compliance.

The Board's Order focuses on the Very Low Density Residential (R-1A) and Low Density Residential (R-1) FLUM designations and Land Use Element text, finding these designations non-compliant with GMA Planning Goals 1 (Urban Growth) and 2 (Reduce Sprawl). The Order requires modification of R-1A and R-1 designations to meet urban density standards of 4 du/acre.

An additional option for compliance with GMA's urban density requirement is to zone more land for duplex (R-2) and multi-family (R-3) development and to increase the achievable densities in these zones.²⁴

GMA Planning Goal 4, usually referred to as "affordable housing," reads:

Housing. Encourage the availability of affordable housing to all segments of the population of this state, *promote a variety of residential densities and housing types*, and encourage preservation of existing housing stock.

RCW 36.70A.020(4), emphasis added.

Pierce County CPP 6.1 reads:

Provide for more choices in housing types (*sic*, types) and moderate increases in density to exceed at least an average net density of four units per acre.

With 2586 acres of city residential land zoned for low-density or very-low density development, 613 acres for medium-density development "with overall single family character" and a possibility of duplexes, and only 86 acres allowing apartments and condominiums,²⁵ Bonney Lake can hardly be said to be "*promoting* a variety of residential densities and housing types."

Expanding R-2 and R-3 zones and revising regulations to actually *promote* duplexes, zero lot-line, clusters, small-lot development, apartments and condominiums could

²⁴ For example, the 1000 Friends Sprawl Report Card notes that Lynnwood, which requires large suburban-style lots in its single family neighborhoods, has achieved urban densities by promoting development in dense multi-family zones. Ex. 25.2.

²⁵ See Board Table 1, *supra*, at 6.

appropriately offset some of the less-than-urban densities of existing large-lot neighborhoods.

Bonney Lake currently has only 0.9% of its total land area developed as multi-family or duplexes.²⁶ As Petitioners urge, “This Board can easily conclude that the City should be designating more land for multi-family and not less.” Jensens’ PHB, at 19. Thus, while the redesignation of petitioners’ property to medium-density was within the City’s discretion under GMA, restoring the higher density designation and upzoning the property accordingly would be a good first step toward genuine promotion of a variety of residential densities in Bonney Lake.

Other strategies should focus on making medium and high density designations more workable. Petitioners cite CTED’s comment on the City’s R-3 density assumptions: “Furthermore, the assumed density in the Multiple Residential designation/R-3 zone is 20.0 du/acre. Given that the permitted density in this designation tops off at 20.0, there is no certainty that this maximum will be achieved.” *Id.*, at 15, quoting CTED Letter, at 3.

Bonney Lake argues that “Petitioners have not demonstrated *how* the City’s zoning regulations work to prevent maximum densities.” Bonney Lake Response, at 22, fn. 33. I disagree.

Lot size requirements currently ensure that medium density (R-2) zoning, on paper allowing 9du/acre, allows at most 5 single family homes or 8 duplexes per acre (ignoring necessary deductions for right-of-way, topography and the like).²⁷ As Petitioners note, “It is physically impossible to meet the maximum allowed density of 9du/acre for this zone given the lot size restrictions.” Jensens’ PHB, at 14.

Transition zone policies further reduce building allowances at the interface of multifamily and low-density residential zones.²⁸ Petitioners point out that “The City could end up using the Transitions policy to take properties designated for higher densities and forcing lower densities on the property so as to ‘protect’ existing neighborhoods.” *Id.*, at 11, fn. 12.

Small-lot development requires the extra step of planned-unit-development approval. Petitioners note, “There are no policy directives in the Plan for smaller lot sizes, clustered developments, reduced bulk standards and the like.” *Id.*, at 25. Petitioner attaches CTED’s letter which comments on the City’s small lot PUD provisions:

²⁶ Figure 4-1, Existing Land Use, at 4-5, Jensens’ PHB, Ex. 2.

²⁷ Minimum lot sizes in the R-2 zone are 8,600 square feet for single family and 10,000 square feet for duplex. Bonney Lake Response, at 2.

²⁸ Land Use Element 4-16, Jensens’ PHB, Ex. 2.

“However, the small lot PUD designation has a minimum lot size of 6,000 square feet. Small lots are defined [in CTED Guidelines] as those of 5,000 square feet or less. CTED recommends reducing the minimum lot size in small lot PUDs to no larger than 5,000 square feet.” CTED Letter, at 4 (citations omitted), Petitioner’s PHB, Ex 6. CTED urges the City to consider “additional approaches to permitting and encouraging small lots,” providing examples from other jurisdictions. *Id.*

In sum, while concurring with my colleagues, I would propose a broader range of options for compliance with GMA Planning Goal 4 (Housing) and would require Bonney Lake to revisit its medium and high density residential designations and regulations to promote a variety of residential densities and housing types and to offset the less-than-urban densities in its existing large-lot neighborhoods.

APPENDIX A

PROCEDURAL BACKGROUND

A. GENERAL

On March 25, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Dan and Randy Jensen (**Petitioners** or **Jensens**). The matter was assigned Case No. 04-3-0010, and is hereafter referred to as *Jensen v. City of Bonney Lake*. Board member Edward G. McGuire was the Presiding Officer (**PO**) for this matter. Petitioners challenge Bonney Lake's (**Respondent** or the **City**) adoption of Ordinance No. 1011 adopting an amendment to the City's Comprehensive Plan that changes the land use designation for 30 acres on the future land use map (**FLUM**) from High Density Residential to Medium Density Residential. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA or Act**).

On April 1, 2004, the Board issued a "Notice of Hearing"; on April 26, 2004, the Board held the PHC; and later that same day the Board issued a "Prehearing Order" (**PHO**) setting the schedule and Legal Issues for this case.

B. MOTION TO SUPPLEMENT THE RECORD

On April 26, 2004, the Board received "Bonney Lake's Index to Record" (**Index**).

On June 4, 2004, the Board received "Stipulation and Order to Supplement the Record." The parties agreed and stipulated that the record be supplemented with two exhibits.

On June 21, 2004, the Board issued its "Order on Motion to Supplement the Record." The Order granted the stipulation requested by the parties and added two items to the record.

C. DISPOSITIVE MOTIONS

There were no dispositive motions in this matter.

D. BRIEFING AND HEARING ON THE MERITS

On June 12, 2004, the Board received "Petitioners' Opening Brief," with 10 attached exhibits (**Jensens' PHB**).

On August 2, 2004, the Board received the City of Bonney Lake's "Respondent's Brief," with 11 attached exhibits (**Bonney Lake Response**).

On August 9, 2004, the Board received "Petitioners' Reply Brief" (**Jensens' Reply**).

On August 12, 2004, the Board held a Hearing on the Merits at the Board's offices in Suite 12470, 900 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioners were represented by Matthew L. Sweeney. Respondent City of Bonney Lake was represented by Lance M. Andree. Amanda Carr, Board extern also attended. Court reporting services were provided by Barbara Hayden of Byers & Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 12:00 p.m. The Board did not order a transcript of the HOM.

APPENDIX B

FINDINGS OF FACT

1. On November 18, 2003, Pierce County adopted Ordinance No. 2003-103s which designated five rural areas in unincorporated Pierce County adjacent to the City of Bonney Lake as urban growth area (**Bonney Lake UGA expansions**). *See Orton Farms*, CPSGMHB Case No. 04-3-0007c.
2. Ordinance 1011 was adopted by the City of Bonney Lake on January 27, 2004. Ex. 1.
3. On June 8, 2004, Pierce County adopted Ordinance No. 2004-37 which repealed the five Bonney Lake UGA expansions. *See 1000 Friends III*, CPSGMHB Case No. 04-3-0015.
4. Ordinance 1011 includes on the Plan FLUM designations for the five Bonney Lake UGA expansions, which were repealed by the County; the City has not revised its FLUM to reflect that these lands remain rural. Ex. 1, Attachment 1, FLUM; Q&A at HOM.
5. Ordinance 1011 was intended to partially comply with the GMA's Plan review and update requirement that is to be completed by December 1, 2004. *See RCW 36.70A.130(1), (2) and (4)(a)*, and Ex. 1, at 1.
6. The City of Bonney Lake intended to comply with the Plan Update requirements in two phases; Phase 1 of the City's Comprehensive Plan Update was adopted by Ordinance 1011. Ex. 1 at 2.
7. Phase 1 of the Plan Update, adopted revisions to the Community Character, Natural Environment, Land Use and Housing Elements of the City's Plan. Ex.1, Attachment 1.
8. In preparation for the 2004 Update, the City's staff reviewed the Plan and implementing development regulations and identified 65 "inconsistencies" between the Plan's FLUM designations and zoning designations, and made recommendations to resolve the inconsistencies. Ex. 68, at 1-11.
9. Of the 65 "inconsistencies," staff recommended that the zoning be revised to implement the Plan's FLUM designations in 27 instances; in 32 instances the recommendation was that the Plan's FLUM be revised to be consistent with the zoning designations; and in six instances where the Plan FLUM allowed higher density than the zoning the recommendation was for no change, but entertain rezones if and when the area was ripe for development. *Bonney Lake Response*, at 4; Ex. 68, 1-11.

10. The Planning Commission made recommendations based upon the staff report, and City Council adopted the recommendations of the Planning Commission that related to amending the Plan's FLUM. [The recommended 32 FLUM changes were made] Bonney Lake Response, at 4-5.
11. Of the 32 changes to the FLUM, 14 lowered density designations, 15 raised densities and 6 did not affect densities. The net affect of new residential designations and higher-density designations was to increase the allowed densities on 62 acres of land within the City. *Id.*, at 5-7.
12. One of the areas [approximately 30 acres] where the Plan FLUM was changed to lower the permitted residential density from R-3 [high density residential, up to 20 units per acre] to R-2 [medium density residential, five to nine units per acre] includes the Jensens' 3.4 acres. Exs. 68, 71 and PFR.
13. 3285 acres of land in the City of Bonney Lake (approximately 66%) is designated solely for residential uses. Ex. 1, Ordinance 1011, Attachment 1, Figure 4-5, at 4-11.
14. The Very Low Density Residential FLUM designation allows up to two units per acre, and is implemented by the City's R-1(A) zone. 250 acres of the City has this designation, accounting for 5% of the land in the City. *Id.*
15. The Low Density Residential FLUM designation allows up to four units per acre, and is implemented by the City's R-1 zone. 2336 acres of the City has this designation, accounting for 47% of the land in the City. *Id.*
16. The Medium Density Residential FLUM designation allows between five to nine units per acre, and is implemented by the City's R-2 zone. 613 acres of the City has this designation, accounting for 12% of the land in the City. *Id.*
17. The High Density Residential FLUM designation allows up to 20 units per acre, and is implemented by the City's R-3 zone. 86 acres of the City has this designation, accounting for 2% of the land in the City. *Id.*
18. The City's Plan indicates that, as of 2002, the gross residential density inside the city limits was 1.45 dwelling units per acre. The net residential density (deducting streets, critical areas and other unbuildable areas) inside the city limits is approximately 2.76 dwelling units per acre. Ex. 1, Ordinance 1011, Attachment 1, at 4-5.
19. The Pierce County Buildable Land Report for Bonney Lake indicates that, between 1995 and 2000 the average residential density in the City was 3.35 du/gross acres (based upon permits) or 2.98 du/gross acres (based upon plats). Supp. Ex. 2, at 29-30.

20. The City's Plan and the BLR verify that the City is not achieving urban densities. Nor is the City encouraging or providing for appropriate urban densities by designating over half the land in the City for Very Low and Low-Density Residential development. Ex. 1, Phase 1 Plan Update, at 4-5; and Supp. Ex. 2, BLR, at 29-30.